D.B. INCOME TAX APPEAL NO.71/2006
(CIT, Jodhpur Vs. M/s Banswara Fabrics Ltd.)

Date of order : 4.8.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.K. Bissa, for the appellant.
Mr. Sanjay Johri, for the respondent.

By the very same order under appeal, the Tribunal has decided three appeals filed by the assessee. Three appeals have been filed by the assessee relating to the assessment years 1986-87, 1987-88 and 1988-89, which have been decided in favour of the assessee. Aggrieved by the said order, the revenue has preferred three appeals one of which being DB Income Tax Appeal No.56/2003, related to the assessment year 1987-88. In all the three appeals including the present one, following four question of law were were stated to be substantial questions of law arising for consideration against the judgment of the Tribunal dated 28.8.2002 :

> "1. Whether on the facts and in the circumstances of the case, the Tribunal is justified in deleting the addition on account of interest chargeable on the debit balances of (i) M/s. Jai Mangal Investment and Trading Co. and (ii) M/s. Banswara Textile Mills Ltd. on the ground that the debit balances were trade debts, ignoring the fact that both the companies are owned by the same group of persons and

non charging of interest is not due to their poor financial position but in fact it is waiver of interest income in favour of the sister concerns which is proved by the categorical findings given by the assessing officer in his order?"

"2. Whether on the facts and in the circumstances of the case, the Tribunal is justified in ignoring the fact that the assessee has been claiming interest payments to its creditors on accrual basis whereas the accounting of interest on its debts, is claimed to be on 'receipt basis' which is not permitted under the I.T. Act?"

"3. Whether on the facts and in the circumstances of the case, the ITAT is justified in deleting the addition on disallowance made on account of violation of provisions of Section 40A(3) of the Act treating these payments covered by the exceptional or unavoidable circumstances under Rule 6DD(j) of Income Tax Rule, 1962 when the assessee had been making transactions through back for other purposes?"

"4. Whether on the facts and in the circumstances of the case the ITAT is justified in ignoring the fact that the whole payments made by the assessee during the previous year to M/s. Banswara Textile Mills were in violation of Section 40A(3) of the I.T. Act and the exceptions provided in Rule 6DD (j) cannot be available through out the year and interpretation of the Rule in such a manner cannot be the intention of the legislature."

It is contended by the learned counsel for the respondents that in DB Income Tax Appeal No.56/2003, the very same questions have been sought

to be raised as substantial questions of law by the revenue in respect of assessment year 1987-88 whereas this appeal relates to assessment year 1986-87.

This Court by detailed judgment in CIT Vs. Banswara Fabrics Ltd., reported in 2004 (267) ITR 398 held that question No.1 cannot be said to be a substantial question of law as it depends purely on finding of fact reached by the Tribunal and in view of of the conclusion to question No.1, question No.2 becomes of academic importance and need not to be dealt with in detail. About question No.3 and 4, the Tribunal found after considering their rival contentions noticing the fact that the assessee company as well as M/s. Banswara Textile Mills were running in losses and have become sick companies and on the basis of these finding there was apparent existence of circumstances which had direct nexus with the financial difficulty that could be caused to the payee in case payment in cash was not received by it and would have also put the assessee into jeopardy because of its dependency on work done through BTM. These findings were held to be findings of fact and not vitiated on any ground and accordingly, the question Nos. 3 and 4 cannot be held to be substantial questions of law arising for consideration. The facts of the present appeal are identical with the appeal arising out of the assessment year 1987-88.

It has also been brought to our notice that another appeal relating to assessment year 1985-86 raising the same issues has also been dismissed by order dated 12.12.2005 passed in DB Income Tax Appeal No.116/2005 which related to question Nos. 3 and 4 only.

In view of the aforesaid circumstances about which there is no dispute that the appeal against the very same order of the Tribunal relating to assessment year 1987-88 has also been dismissed by this Court, this appeal also must fail for the same reasons. Accordingly, we do so.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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